JACK MASK

IBLA 78-456 Decided June 18, 1979

Appeal from decision of Wyoming State Office, Bureau of Land Management, dismissing protest as to the awarding of oil and gas lease parcel WY 38, serial No. W 63640.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases: Applications: Drawings

   An offeror who submits a drawing entry card signed on his behalf by his agent leasing service meets the requirements of 43 CFR 3102.6-1 if satisfactory agency statements by him and his agent, such statements bearing a facsimile signature, are submitted along with his offer card.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Sole Party in Interest -- Words and Phrases

   "Interest." Where there is an agreement giving an offeror the option of selling part of an oil and gas lease to his agent leasing service, exercisable solely at the offeror's discretion, the agent has a mere hope or expectancy and not an "interest" in the offer, as defined in 43 CFR 3100.0-5(b). A leasing service, which files a simultaneous noncompetitive oil and gas lease offer drawing entry card on behalf of its client,

bound by a "put option" does not have a hidden interest in the offer and does not violate 43 CFR 3102.7 by failing to disclose this put option or 43 CFR 3112.5-2 by filing offers for more than one client on a parcel.

3. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Sole Party in Interest

Where there is no evidence in the administrative record that the offeror with first priority in a drawing of simultaneous non-competitive oil and gas lease offers is not the sole party in interest, as stated by both the offeror and his agent, the burden is on a protestant attacking the validity of the offer to provide evidence of an accusation that the offeror/agent agreement gives the agent an enforceable interest in the lease to be issued.

APPEARANCES: S. B. Christy IV, Esq., Jennings and Christy, Roswell, New Mexico, for appellant; James W. McDade, Esq., McDade and Lee, Washington, D.C., for respondent, Carl M. Fromm.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Jack Mask appeals from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated May 23, 1978, dismissing his protest regarding the awarding of oil and gas lease parcel WY 38 to Carl M. Fromm.

Carl M. Fromm used a filing service, Stewart Capital Corporation (Stewart), to enter his drawing entry card (DEC) in the April 1978 simultaneous noncompetitive oil and gas lease offer drawing. His rubber stamp signature was placed on the card by an employee of Stewart and his card was drawn with first priority. Appellant's card was drawn with second priority. On May 12, 1978, BLM requested Fromm to submit an affidavit with information regarding the facsimile signature. The affidavit showed that: (1) He, the offeror, did not affix the facsimile signature; (2) the facsimile signature was placed on the card at his direction, and it was his intent at the time the offer was signed that the facsimile signature be his own signature; (3) Stewart selected the parcel number for this offer.

In the affidavit, Fromm referred to statements signed by both him and Stewart which accompanied his offer. The statements describe the relationship between Fromm and Stewart and list the services provided by Stewart in their contract.

In his protest filed May 19, 1978, appellant stated that Fromm's filing was in contravention of 43 CFR 3102.7 in that he did not reflect other parties in interest, and in violation of 43 CFR 3112.5-2 which proscribes multiple filings.

The State Office dismissed appellant's protest on the basis of information in separate statements submitted with his offer, and signed by both Fromm and Stewart. The substance of the statements was that neither Stewart nor any other person or organization not named on Fromm's card had any interest in his offer. The State Office concluded that since no other parties were indicated on Fromm's card and the statement clearly states that there are no other parties in interest, 43 CFR 3102.7 was not violated.

In his statement of reasons for appeal, Mask contends that Fromm should be disqualified for failure to disclose an agency relationship with Stewart and for failure of such agent to timely file material required by 43 CFR 3102.7. Appellant contends that Stewart acted as Fromm's agent and, therefore, 43 CFR 3102.6-1 is applicable requiring both the offeror and Stewart to file separate statements of interest. Appellant says that no such statement has been submitted by Stewart, and that the time for submitting it has expired. He notes that a "Statement" was filed by Stewart without statement of qualifications. Appellant points out that Froom did not sign his statement and letter authorizing Stewart to reproduce, affix a signature, and file a copy of the original statement with each offer.

Appellant also contends that Fromm's offer to lease should be rejected because of the unfair advantage it offered to Stewart. Investigation into the operations of Stewart, appellant claims, shows that most winners using the Stewart filing services are required to assign a portion of their leases to the filing agency. It has become apparent to appellant that the filing agency through the use of "put options" does have an interest in Fromm's offer to lease thus constituting a violation of the regulations against multiple filing (43 CFR 3112.5-2).

Appellant adds that Fromm's offer should be rejected because Stewart's address appeared on over 100 DECs filed for parcel WY 38.

In response to the statement of reasons, Fromm states that he and Stewart have filed statements required by 43 CFR 3102.6-1 when the offer is signed by an agent. These statements disclose that between him and Stewart there is a relationship that was held in D. E. Pack, 30 IBLA 166, 80 I.D. 192 (1977), and other cases to constitute an "agency." They further state, Fromm points out, that Stewart has no interest in the lease that may issue pursuant to the offer, so there is no requirement under 43 CFR 3102.7 of any additional statement setting forth either the interest of any party other than Fromm or the qualifications to hold a lease of any such other party.

[1] We find that Fromm's drawing entry card was, in fact, accompanied by statements from Fromm and Stewart as required by 43 CFR 3102.6-1(a)(2) when the agent, on behalf of the offeror, writes, stamps, prints, or otherwise applies the offeror's signature to the DEC. Fromm's statement indicates, in part, as follows:

> I have contracted with Stewart Capital Corporation to perform the following functions: affix my signature by means of rubber stamp or other facsimile to offering cards and this statement (which facsimile signatures shall be deemed mine for all purposes); supply me with the benefit of a ranking of the lease parcels available each month under the simultaneous program; prepare a set number of offering cards on my behalf for a set number of months; file such offering cards on the ranked parcels available each month during the life of my contract; advise me of any winning leases obtained under the program; advance any rental payments due on winning leases and bill me therefor immediately.
>
> Neither Stewart Capital Corporation nor any other person or organization not named on my offering card has any interest in my offering. No agreement nor understanding exists between me and Stewart Capital Corporation or any other person not named on the offering card, either oral or written, by which Stewart Capital Corporation or such other person has received, or is to receive any interest in a lease if issued as a result of this filing, including royalty interest or interest in any operating agreement. I do, of course, preserve the right, after filing this offer, to create a contract of assignment or sale of my interest in this offer, to any qualified person or organization. [Emphasis supplied.]

The content of the statement filed by Stewart is essentially the same.

The facts in this case are remarkably 8] similar to those in Virginia L. Jones, 34 IBLA 188 (1978), in which Fillingim's offer was drawn with first priority and that appellant's drawn with second priority. Fillingim's DEC was accompanied by a statement identical to the one which accompanied Fromm's offer. In addressing itself to the contention of Jones that Fillingim's offer had violated 43 CFR 3102.6-1, the Board stated at 192:

> In the instant case, Fillingim's offer meets the requirements of these regulations. It bears a rubber-stamped facsimile of his signature, admittedly affixed on his behalf by Stewart, his designated agent. Thus, the requirement that separate statements be filed operates

> here. Fillingim did in fact submit these separate statements along with his drawing entry card. These statements indicate unequivocally that no agreement exists between him and Stewart under which Stewart receives or will receive any interest in the lease if issued. Since it was declared that there was no agreement creating an interest in Stewart, Fillingim was not required to submit a copy of "any such agreement" with his offer card. Accordingly, BLM's decision dismissing appellant's protest must be affirmed, since the present record does not show that Fillingim failed to comply with any regulation concerning the filing of simultaneous noncompetitive oil and gas lease offers.

Appellant points out that Fromm's statement was not "signed" by Fromm, but shows a facsimile signature. The file contains a letter to Fromm from Stewart dated November 9, 1977, requesting that Fromm sign and return a copy of that letter authorizing Stewart to reproduce, affix a signature, and file a copy of the original statement with each DEC. Appellant points out that this authorization also had a facsimile signature. As this letter was sent to Fromm requesting him to sign the authorization, it is reasonable to conclude that Fromm affixed his own rubber stamp signature and returned the letter to Stewart. Appellant has submitted no evidence which would cause us to believe otherwise.

For the reasons stated in the recent W. H. Gilmore, 41 IBLA 25 (1979), and in accord with that holding, we find that Fromm's statement signed with a facsimile signature is sufficient to meet the requirements of 43 CFR 3102.6-1(a)(2).

Appellant contends that Fromm's offer to lease should be rejected because of the unfair advantage it offered to Stewart. Appellant assumes that Fromm has executed a "put option" with Stewart or one of its affiliates and requests the Board to require Fromm to state whether or not he has entered into a "put option" with Stewart or its affiliates.

[2, 3] The "put option" was explained by the Board in D. E. Pack, 40 IBLA 45, 46 (1979), footnote 1, as follows:

> The so-called "put option" describes an agreement between the leasing service and its client whereby the service agrees in advance to purchase, at the client's sole election, a specified percentage of any lease which the client might be awarded at a pre-determined price. However, the leasing service has no right to compel the client to convey any interest to it, so that when the lease issues to the client, the service has no enforceable interest therein. [Emphasis in original.]

Where, as here, there is no evidence of any violation of the regulations in the record, the burden is on the protestant to submit competent evidence of an accusation that there is an agreement giving the filing service an enforceable interest in the lease, absent which the protest is properly rejected. Lee S. Bielski, 39 IBLA 211, 86 I.D. 80 (1979); see Virginia L. Jones, supra; Arjay Oil Co., 33 IBLA 102 (1977). Appellant has not submitted such evidence.

Even if the facts showed that Fromm had executed a "put option," the Board has held that such an agreement does not constitute an "interest" in the offer as defined in 43 CFR 3100.0-5(b), and it does not appear that either 43 CFR 3102.7 (the regulation requiring disclosure of interests in the lease) or 43 CFR 3112.5-2 (the regulation prohibiting the filing of offers for more than one client on a parcel) has been violated. D. E. Pack, 40 IBLA 45 (1979); Virginia L. Jones, supra; D. E. Pack, 30 IBLA 166, 84 I.D. 192 (1977); John V. Steffens, 74 I.D. 46 (1967).

Regarding the use of Stewart's address on Fromm's DEC, the Board has held that the use of such address does not disqualify the offer. D. E. Pack, 40 IBLA 45 (1979); Dexter B. Spalding, 37 IBLA 4 (1978); Bruce E. Watkins, 36 IBLA 168 (1978).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

I concur:

Edward W. Stuebing
Administrative Judge

ADMINISTRATIVE JUDGE FISHMAN CONCURRING SPECIALLY:

I reluctantly conclude that the protestant -- appellant Jack Mask -- has failed to establish, by compelling evidence, violations of the Federal mineral leasing system. However, the record raises more questions than it answers in this regard, and I believe a full and thorough investigation as to the "put options" and other related facets of the operations of Stewart Capital Corporation appropriately could be undertaken by the Bureau of Land Management.

The BLM Wyoming State Office decision of March 17, 1977, in the case of J. Harry Douma, W-57758, recites in part that:

> At the time your lease offer was filed your filing agency [Stewart Capital] had a legal right to demand that you assign a 35% interest in every lease won during the course of your program should you elect to exercise your option. Their interest was very real when your filing card was put into the drawing. You were therefore required to submit additional statements as to other parties in interest which you failed to do.

Exh. 1, page 3, attachment to Statement of Reasons.

Exhibit 2, page 6, ibid., captioned "Federal Oil Land Acquisition Service 'A'" states as follows:

> PUT-OPTION Participants who so desire may purchase from Stewart an 18-month "Put-Option" for the sum of $3,285. The premium for the "Put-Option", for those who accept it, is payable when the participant enters the program. The "Put-Option" entitles the client to sell to Stewart for $28,560 an undivided 35% interest in all leases acquired as a result of the Folap "A" services.
>
> Example: Acquisition of Leases with a Total Value
> 1000 app'ns) of Less Than $81,600:
>
> A participant who acquires less than $81,600 in lease value would "put" 35% of his leases to Stewart.
>
> Example: Acquisition of Leases with a Total
> 1000 app'ns) Value of More Than $81,600:
>
> Since 35% of $81,600 is $28,560, a participant who acquired leases valued at more than $81,600 would allow the "Put-Option" to expire without exercising it.

Who determines the value of the leases and at what time is enshrouded in mystery.

I am constrained to the view that appellant has not demonstrated any obligation on the part of any Stewart Capital client to sell any or all of his leases to it. But Stewart Capital apparently has several discrete arrangements with its clients, and to avoid any possible unwarranted adverse criticism of Stewart or BLM, a thorough investigation would clear the air.

Alternatively, BLM should endeavor, by rulemaking, to overcome the impact of Mary I. Arata, 4 IBLA 201, 78 I.D. 201 (1971), permitting the use of facsimile signatures. While Arata correctly depicts the law, it has given rise to activities inimical to public confidence in the mineral leasing program. To utilize a facsimile signature to affirm or buttress the prior purportedly authorized use of a facsimile signature is to mock the integrity of existing procedures.

Frederick Fishman
Administrative Judge